

## IN THE HIGH COURT OF SINDH AT KARACHI

Present:  
Mr. Justice Omar Sial  
Mr. Justice Muhammad Hasan (Akber)

### High Court Appeal No. 142 of 2000 [Punjab Industrial Development Board vs. United Sugar Mills Limited]

Appellant : through Mr. Muhammad Ali Talpur, Advocate.

Respondent : through M/s. Abdul Razzaq and Aqib Hussain, Advocates

Date of Hearing : 16.05.2025

Date of Decision : 08.08.2025

### JUDGMENT

Omar Sial, J: The instant appeal pertains to a dispute that finds its origins in agreement dated 9.2.1986 ("the Agreement") executed between the contesting parties. Briefly, the agreement finalised the terms on which United Sugar Mills (USM, Respondent) was to acquire Pasroor Sugar Mills (PSM) from Punjab Industrial Development Board (PIDB, Appellant).

2. Dispute arose between the parties over the interpretation of the Agreement more specifically clauses 8 and 10. Clause 19 provided that in case of a dispute the matter would be settled by means of arbitration. Both parties, by consent, appointed Mr. M.R.Khan to be the sole arbitrator. On the completion of the arbitration, the sole arbitrator granted a sum of Rs. 1,209,385/- along with 10% interest from the date of award to USM via award dated 30.3.1991. When the award was filed by USM for being made the rule of the court, PIDB filed objections to it pursuant to section 30 and 33 of the Arbitration Act, 1940. The

same stood dismissed and award was made the rule of the court via Judgement dated 11.01.2000 in Suit No. 1094/1991. It is this Judgement which is assailed before us. For sake of completion it is mentioned that the instant appeal was dismissed in limine via Order dated 25.08.2005. However, the said order was set aside and the appeal stood remanded via Order dated 22.3.2007 by the Supreme Court in Civil Appeal No.983 of 2007 out of Civil Petition No.2717 of 2005.

3. It is settled law that the Court while reviewing an award does so in a supervisory role<sup>1</sup> and is not to act as a court of appeal.<sup>2</sup> It can not substitute its own view for that of the arbitrator. Its jurisdiction for review is limited to a patent illegality floating on the surface of the record and the court can not undertake a roving inquiry into the correctness of the arbitrator's decision.<sup>3</sup> The Supreme Court has identified three broad categories on the touchstone of which an award can be reviewed; (i) jurisdictional (non-existence of valid and binding agreement); (ii) procedural (failure to observe natural justice) and (iii) substantive (mistake of law).<sup>4</sup> In addition to the above, misconduct is another ground, which if proved, entails the consequence of setting aside of the award.

4. PIDB has not challenged the award on jurisdictional or procedural grounds. Its challenge is two-fold; (i) on substantive ground and on the ground of (ii) misconduct.

5. On substantive ground, the case of PIDB is that the arbitrator erred in law by interpreting the Agreement in a holistic manner and he was required to interpret clause 8 in isolation.<sup>5</sup>

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<sup>1</sup> 2023 SCMR 1103, National Highway Authority v. Messrs. Sambu Construction Co. Ltd. Islamabad & others

<sup>2</sup> 2014 SCMR 1268, A.Qutubuddin Khan v. Chec Millwala Dredging Co. (Pvt.) Limited

<sup>3</sup> 2022 SCMR 1810, Shahin Shah v. Govt of Khyber Pakhtunkhwa through Secretary Irrigation

<sup>4</sup> Id. at 1

<sup>5</sup> Clause 8, "That the Vendor has stated that the Company owes certain sums of money to it on account of payment regarding working capital requirements of the Mills. However, it is agreed, as an essential condition to this Agreement, that save and except for the sum of Rs.30 million no amount shall be due or owing or payable by the Vendee to thee Vendor. This sum of Rs. 30 million shall be payable in the following manner..."

As per a holistic interpretation of the Agreement, it is abundantly clear that the sale consideration for Pasroor Sugar Mills was decided to be Rs.1/-.<sup>6</sup> The reason for such a low consideration was because Pasroor Sugar Mills was being disposed of as a sick unit and its liabilities were being passed down to USM.

6. PIDB's stance is that Rs.30 million that were to be paid by USM to it was also part of the sale consideration. Whereas, USM asserted that this was the liability that was owed by Pasroor Sugar Mills to PIDB which USM was required to clear. That the same could not be deemed as sale consideration. The arbitrator was persuaded by USM's stance which it concluded was backed by the relevant documentation.

7. The Agreement, as drafted, clearly demonstrates that the parties intended for the sale consideration to be Rs.1. Additionally, USM was to bear the legal responsibility for liabilities of PSM. One such liability of PSM was owed to PIDB. This liability i.e. 30 million, were required to be paid by USM to PIDB as per the mechanism set out in clause 8 of the Agreement and Rs.5 million against which already stood paid on the date of the Agreement's execution. USM's case was that the Agreement came into effect on 15.11.1985 (as per clause 11). However, the day to day operations were handed over to USM on 16.09.1985 in order to enable it to be ready for the next crushing season. During the period of 16.09.1985 till 15.11.1985, PIDB admittedly withdrew large sums of money from PSM's account. PIDB admits that, inter alia, Rs. 27,418,328/- were withdrawn against the liability owed by PSM to PDIB. However, it goes on to assert that USM was not entitled to this account per say and a new account for PSM was opened for the use of USM. Even otherwise, PIDB claims that

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<sup>6</sup> Clause 3, "That the total price of the said shares shall be Rupee ONE ONLY. In addition to paying the price the Vendee shall also accept legal responsibility for the liabilities as set out hereinafter provided, with the object that the Vendee shall acquire the entire shareholding in the Company."

Rs.30 million is part of the sale consideration and required to be paid by USM to PIDB. Neither of the said assertions find support in the record.

8. The arbitrator disagreed with the stance of PIDB. He held that to agree to PIDB's assertion would translate into double repayment of the loan by USM to PIDB. We see no patent illegality floating on the record so far as the arbitrator's reasoning and decision is concerned. The same is in alignment with settled law that a contract is required to be interpreted holistically and not in fragmented parts.<sup>7</sup> Hence, the arbitrator did not err in law at reaching his conclusion. Hence, this objection of PIDB fails.

9. So far as the arbitrator's grant of Rs. 1,209,385/- to USM is concerned, PIDB has mentioned the same but not raised any ground to vitiate the legitimacy of the said grant. Hence, no discussion of the same is being made which even otherwise is covered by the award.

#### *Misconduct*

10. PIDB has claimed that Mr. Khan was unanimously nominated as the arbitrator owing to his Chairmanship of Pakistan Banking Council. While the arbitration proceedings were ongoing, Mr. Khan stood retired as Chairman. Upon his retirement, PIDB claims that it wished to discontinue with Mr. Khan but such request was not heeded to and PIDB begrudgingly continued with Mr. Khan. That by forcing PIDB to continue with Mr. Khan, he had misconducted himself. Accordingly, on this ground alone, the award should be vitiated.

11. The above claim of the PIDB is factually incorrect. In fact, upon retirement the record bears that Mr. Khan wrote to both parties inquiring whether they would wish to continue with him.

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<sup>7</sup> 2024 PLD 1028 SC, Hamza Rasheed Khan v. Election Appellate Tribunal

PIDB vide its letter dated 15.5.1990 wrote, *“Reference my meeting with you on 5<sup>th</sup> May 1990 concerning the arbitration proceedings between PIDB and M/s United Sugar Mills Ltd. We would like to confirm that the arbitration proceedings will continue with you as sole Arbitrator...”*

12. Hence, to claim otherwise at this stage and use it as a pretext to vitiate the award on the ground of misconduct is disingenuous to say the least. In a similar vein, the claim that Mr. Khan had financial interests in companies that were in one way or the other affiliated with USM is also an afterthought. As is evident from the Judgement dated 11.1.2000 the Directorship of Mr. Khan in other companies was public knowledge. We further note that Mr. Khan was elected as the sole arbitrator with the consent of PIDB. If PIDB had any reservations as to his character or financial interests, it should not have given its consent to his appointment. PIDB can not be allowed to approbate and reprobate at the same time. Nothing on the record bears out that the arbitrator had misconducted himself. Hence, this objection also fails.

13. Above are the reasons for maintaining the Judgement dated 11.1.2000 whereby the award dated 30.3.1991 was made rule of the court.

JUDGE

JUDGE